

BEFORE THE COMMISSION FOR COMMON-INTEREST
COMMUNITIES AND CONDOMINIUM HOTELS
STATE OF NEVADA

Sharath Chandra, Administrator,
Real Estate Division, Department of
Business & Industry, State of Nevada,

Petitioner,

vs.

Desert Garden Homeowners Association,
Inc., Daniel Wright, Larry Hawker, Dawson
Smith, and Bradley Shultis,

Respondents.

Case No. 2019-852

FILED

JAN 20 2021

NEVADA COMMISSION FOR
COMMON INTEREST COMMUNITIES
AND CONDOMINIUM HOTELS

Kelly Valadez

STIPULATION AND ORDER FOR SETTLEMENT OF DISCIPLINARY ACTION

This matter came on for hearing before the Commission for Common-Interest Communities and Condominium Hotels, State of Nevada (the "Commission"), during a regular agenda on October 27, 2020, via telephone and video, with no physical public location (as permitted by the Governor's Declaration of Emergency, Directive 006, as thereafter extended) (the "Hearing"). RESPONDENTS Desert Garden Homeowners Association, Inc., Daniel Wright, Larry Hawker, Dawson Smith, and Bradley Shultis (collectively "RESPONDEENTS") appeared through their counsel Adam Knecht of Alverson Taylor & Sanders and Karissa D. Neff, Esq., Deputy Attorney General with the Nevada Attorney General's Office, appeared on behalf of the Real Estate Division of the Department of Business and Industry, State of Nevada (the "Division"). RESPONDENTS and counsel for the Division presented settlement terms to the Commission. The Commission unanimously approved and ordered the stipulated terms.

JURISDICTION AND NOTICE

1. During the relevant times mentioned in this complaint, RESPONDENTS DANIEL WRIGHT, LARRY HAWKER, and BRADLEY SHULTIS served as board members and/or officers of DESERT GARDEN HOMEOWNERS (the "Association"), a

1 common-interest community located in Las Vegas, Nevada.

2 2. RESPONDENTS are subject to the provisions of Chapter 116 of each the
3 Nevada Revised Statutes ("NRS") and the Nevada Administrative Code ("NAC")
4 (hereinafter collectively referred to as "NRS 116") and are subject to the jurisdiction of
5 the Division, and the Commission for Common-Interest Communities pursuant to the
6 provisions of NRS 116.750.

7 **SUMMARY OF FACTUAL ALLEGATIONS IN COMPLAINT**

8 3. DESERT GARDEN HOMEOWNERS ASSOCIATION, INC. is a 148 unit
9 condominium project located in Las Vegas, Nevada.

10 4. At relevant times mentioned in this Complaint, the Association's board
11 consisted of RESPONDENTS DANIEL WRIGHT, LARRY HAWKER, DAWSON SMITH
12 AND/OR BRADLEY SHULTIS, who collectively also own no less than 115 of the 148 units
13 in the Association.

14 5. From 2011 through 2018, the Association was managed by Eugene Burger
15 Management.

16 6. Beginning in February 2018, the Association was managed by 5STRMGT,
17 LLC, a Nevada limited liability owned by Yvonne Culliver.

18 7. The Division initiated an audit of the Association on December 14, 2018, due
19 to the possibility that the Association's reserve account was underfunded and because the
20 Association failed to conduct a 2017 audit.

21 8. The Division's audit revealed the following:

- 22 • The Board failed to adequately fund the operating and reserve accounts;
- 23 • The 2018 Reserve Study reflected a year end percent funded of -22% due to
24 necessary reserve expenses and the lack of funding to date;
- 25 • The Association's 2018 Reserve Study showed that prior to the 2018 audit, the
26 Board removed major components of the common elements and the Board and community
27 manager failed to respond to the auditor's request to provide confirmation that the Board
28 followed the statutes and governing documents in the removal of the common elements;

- 1 • The Board failed to adhere to the approved Reserve Budget or Reserve Study
- 2 Recommendations;
- 3 • Specifically, the 2018 Reserve Study recommended a total reserve
- 4 contribution of \$13,837, the Association budgeted \$106,339, but only contributed \$6,600;
- 5 and
- 6 • The 2018 Reserve Study listed \$201,178 in expenditures, the Association
- 7 Budgeted \$39,180, but only spent \$5,127.

8 9. On August 7, 2019, the Division properly gave notice to the Association that

9 it had opened an investigation regarding the Association and possible violations of

10 NRS/NAC 116 and alleged certain violations and requested responses from each Board

11 member for the following: (1) the Board failed to maintain, repair, and/or replace the

12 common elements of the Association, (2) the Board failed to properly fund the

13 Association's reserve account to properly cover the costs to repair, replace or maintain the

14 major components of the Association, (3) the Board failed to assess common expenses,

15 including the reserves, against all units to fund the repair, replacement, and restoration

16 of the major components of the common elements or other portions that the Association

17 is obligated to maintain, replace, and/or restore or repair, (4) that the Association's bank

18 card improperly granted the Association's manager the authority to sign on the reserve

19 account, (5) the Board failed to impose fines against unit owners and/or their tenants for

20 violations, and (6) the Board failed to conduct the Association's 2017 audit.

21 10. In the Divisions August 7th letter to the Association, the Division also

22 requested that the Board provide documentation that it funded the reserve account

23 appropriately and had funds to repair, replace, and maintain major components,

24 documentation that the Association has been providing maintenance, repairs, and

25 replacements, and documentation that supports how the Board would remedy the

26 violations set forth in the August 7th letter and/or documentation showing the Board

27 complied with all statutes (collectively, the "Requested Documents").

28 11. Yvonne Culliver, the Association's community manager responded to the

1 Division regarding its investigation.

2 12. In response to the allegation that the Board failed to properly fund the
3 Association's Reserve Account, Ms. Culliver stated, "as of today the HOA currently has
4 \$107,523.53 in their reserve account."

5 13. The 2018 Reserve Study indicates full funding would be approximately
6 \$450,000 in 2019, but this number also assumes significant maintenance, repairs or
7 replacements were already completed.

8 14. In response to the allegation that the Association's bank card improperly
9 granted the Association's manager the authority to sign on the reserve account, Ms.
10 Culliver stated that a new signature card would be submitted, that the boxes on it, had
11 been mismarked, and that the manager has never signed on the reserve account.

12 15. No documentation was ever provided to the Division that the Association's
13 bank card removed the Association's manager from the reserve account.

14 16. In response to the allegation that the Board failed to conduct the
15 Association's 2017 audit, Ms. Culliver responded that the December 2017 audit was
16 completed July 26, 2019, and would be finalized and submitted.

17 17. On August 29, 2019, the Division received an email from Ms. Culliver
18 providing a draft 2017 audit and setting forth the same responses set forth in her prior
19 response to the Division.

20 18. On August 30, 2019, Larry Hawker responded to the Division but did not
21 provide the Division with any of the Requested Documents.

22 19. In his response to the Division, Larry Hawker stated the following:

- 23 • The Board has approved improvements to be done that balances budget
24 requirements and reserves verses maintenance issues. That it was difficult
25 because the Association was still in the mode of building reserves required by
26 state law and that is has taken several years to build up sufficient reserves even
27 after passing a special assessment;
- 28 • The Board is trying to build up the reserves and that when he came on board,

1 there were almost no reserves;

- 2 • The Board is trying to maintain costs and provide essential maintenance and
3 repairs and that the property was old and never properly maintained;
4 • That reserves are up significantly;
5 • That signature cards have been updated;
6 • That fines have been imposed where appropriate and that the Board is taking
7 a more aggressive position on fining owners;
8 • That the audit has been completed;
9 • That Ms. Culliver submitted the reserve account information; and
10 • That the Board is in the process of remedying any issues to comply with statutes
11 it believes it is not in compliance with.

12 20. No other Board member provided a response to the Division.

13 21. No further documents were ever provided to the Division.

14 22. Beginning in 2018 and continuing in 2019, the Association imposed tiered
15 assessments based on size of unit, no such authority exists in the governing documents.

16 **SUMMARY OF VIOLATIONS OF LAW ALLEGED IN COMPLAINT**

17 23. RESPONDENT BOARD MEMBERS knowingly and willfully violated NRS
18 116.3103 (through NAC 116.405(3)) by failing to act on an informed basis, in good faith
19 and in the honest belief that their action was in the best interests of the Association by
20 committing incompetence, negligence or gross negligence by failing to adequately fund
21 the reserve and operating accounts, by failing to timely conduct the Association's 2017
22 audit, and by failing to properly maintain, repair, and/or restore the common elements of
23 the Association.

24 24. RESPONDENT BOARD MEMBERS knowingly and willfully violated NRS
25 116.3103 (through NAC 116.405(5)(a) and (c)) by failing to act in good faith and in the
26 best interests of the Association by impeding or otherwise interfering with an
27 investigation of the Division by failing to comply with a request by the Division to provide
28 information or documents and by concealing facts or documents relating to the business

1 of the Association.

2 25. RESPONDENT BOARD MEMBERS knowingly and willfully violated NRS
3 116.3103 (through NAC 116.405(2)) by failing to act in good faith and in the best interests
4 of the Association by acting for reasons of self-interest or gain by personally failing to
5 fund the reserves and failing to make necessary repairs or replacements to the common
6 elements when they collectively own the majority of the units in the Association.

7 26. RESPONDENTS violated NRS 116.31152 by failing to maintain an
8 adequately funded reserve account based on a reserve study.

9 27. RESPONDENTS violated NRS 116.3107 by failing to provide for the
10 maintenance, repair and replacement of the common elements.

11 28. RESPONDENTS violated NRS 116.31153 by permitting the Association's
12 community manager to be a signatory on the Association's reserve account.

13 29. RESPONDENTS violated NRS 116.3103 (through NAC 116.405(8)(a)) by
14 failing to act in good faith and in the best interests of the Association when they failed to
15 cause the Association to comply with all state laws and the governing documents of the
16 Association.

17 SETTLEMENT

18 30. RESPONDENTS stipulate that at the time of the Division's investigation,
19 the Association had inadequate reserves, its operating fund was improperly incurring
20 debt to its reserve fund, and that it had been improperly using tiered assessments.

21 31. RESPONDENTS agree to present a detailed and comprehensive plan to
22 address the Association's delinquent reserve account, including but not limited to
23 establishing reasonable timelines to address maintenance expenses, special assessments,
24 monthly assessments, and the operating fund incurring debt to the reserve fund. The
25 Association's plan with respect to resolving these issues shall be submitted to the Division
26 by January 15, 2021.

27 32. RESPONDENTS will present a plan to address the current Board members'
28 delinquent assessments accounts, specifically a plan to bring their accounts current, to

1 the Division by January 15, 2021.

2 33. RESPONDENTS agree not to perform collection of tiered monthly
3 assessments unless their governing documents are properly amended to do so.

4 34. RESPONDENTS will pay the costs and attorneys' fees incurred by Division
5 in conducting its investigation and in bringing this action before the Commission in the
6 amount of \$1,878.92, within 60 days of the date of the order approving this Stipulation.

7 35. Each board member shall complete 10 hours of Division-approved education
8 within 6 months of the date of the order approving this Stipulation.

9 36. RESPONDENTS agree that if the terms and conditions of this Stipulation
10 and Order are not met, RESPONDENTS shall appear before the Commission and explain
11 the status of providing the proposed plans discussed in Paragraphs 31 and 32 to the
12 Division. Alternatively, the Division may, at its option, rescind this Stipulation and
13 Order as to the RESPONDENTS in default and proceed with prosecuting the Complaint
14 before the Commission.

15 37. RESPONDENTS and the Division agree that by entering into this
16 Stipulation and Order, the Division does not concede any defense or mitigation
17 RESPONDENTS may assert and that once this Stipulation and Order is approved and
18 fully performed, the Division will close its file in this matter.

19 38. Stipulation and Order is Not Evidence. Neither this Stipulation and Order
20 nor any statements made concerning this Stipulation and Order may be discussed or
21 introduced into evidence at any hearing on the Complaint, if the Division must ultimately
22 present its case based on the Complaint filed in this matter.

23 39. RESPONDENTS are waiving their right to a hearing at which
24 RESPONDENTS may present evidence in their defense, their right to a written decision
25 on the merits of the Complaint, their right to reconsideration and/or rehearing, appeal
26 and/or judicial review, and all other rights which may be accorded by the Nevada
27 Administrative Procedure Act, the Nevada Uniform Common-Interest Ownership Act
28 and accompanying statutes and regulations, and the federal and state constitutions.

1 RESPONDENTS understand that this Stipulation and Order and other documentation
2 may be subject to public records laws. The Commission members who review this matter
3 for approval of this Stipulation and Order may be the same members who ultimately
4 hear, consider and decide the Complaint if this Stipulation and Order is either not
5 approved by the Commission or is not timely performed by RESPONDENTS.
6 RESPONDENTS fully understand that they have the right to be represented by legal
7 counsel in this matter at their own expense.

8 40. Release. In consideration of execution of this Stipulation and Order,
9 RESPONDENTS for themselves, their heirs, executors, administrators, successors, and
10 assigns, hereby releases, remises, and forever discharges the State of Nevada, the
11 Department of Business and Industry and the Division, and each of their respective
12 members, agents, employees and counsel in their individual and representative
13 capacities, from any and all manner of actions, causes of action, suits, debts, judgments,
14 executions, claims, and demands whatsoever, known and unknown, in law or equity, that
15 the RESPONDENTS ever had, now has, may have, or claim to have, against any or all of
16 the persons or entities named in this section, arising out of or by reason of the Division's
17 investigation, this disciplinary action, and all other matters relating thereto.

18 41. Indemnification. RESPONDENTS hereby indemnify and hold harmless the
19 State of Nevada, the Department of Business and Industry, the Division, and each of their
20 respective members, agents, employees and counsel in their individual and
21 representative capacities against any and all claims, suits, and actions brought against
22 said persons and/or entities by reason of the Division's investigation, this disciplinary
23 action and all other matters relating thereto, and against any and all expenses, damages,
24 and costs, including court costs and attorney fees, which may be sustained by the persons
25 and/or entities named in this section as a result of said claims, suits, and actions.

26 42. RESPONDENTS have signed and dated this Stipulation and Order only
27 after reading and understanding all terms herein.

28 DATED: January 7th
December __, 2021

REAL ESTATE DIVISION,
DEPARTMENT OF BUSINESS &

INDUSTRY, STATE OF NEVADA

By: 
Sharath Chandra, Administrator

1
2
3
4 DATED: January 7th
5 ~~December~~, 2021

DESERT GARDEN HOMEOWNERS
ASSOCIATION, INC.

By: _____

Name: _____

Title: _____

6
7
8
9
10 DATED: December _____, 2020.

11 _____
12 Daniel Wright

13
14 DATED: December _____, 2020.

15 _____
16 Larry Hawker

17
18 DATED: December _____, 2020.

19 _____
20 Dawson Smith

21 DATED: December _____, 2020.

22 **DECEASED**

23 _____
24 Bradley Shultis

By: _____

Sharath Chandra, Administrator

DATED: December 31, 2020.

DESERT GARDEN HOMEOWNERS
ASSOCIATION, INC.

By: _____

Name: DANIEL WRIGHT

Title: President

DATED: December 31, 2020.

Daniel Wright

DATED: December _____, 2020.

Larry Hawker

DATED: December _____, 2020.

Dawson Smith

DATED: December _____, 2020.

Bradley Shultis

ORDER

INDUSTRY, STATE OF NEVADA

By: Sharath Chandra, Administrator

DATED: December ____, 2020.

DESERT GARDEN HOMEOWNERS
ASSOCIATION, INC.

By: _____

Name: _____

Title: _____

DATED: December ____, 2020.

Daniel Wright

DATED: December 31, 2020.

Larry Hawker

DATED: December ____, 2020.

Dawson Smith

DATED: December ____, 2020.

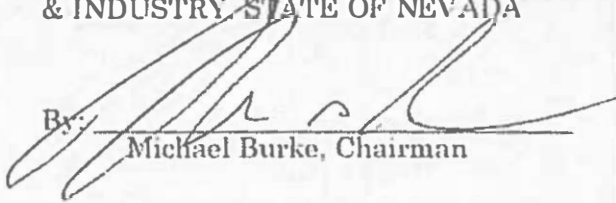
Bradley Shultis

ORDER

IT IS ORDERED that the foregoing Stipulation and Order for Settlement of
Disciplinary Action is approved in full.

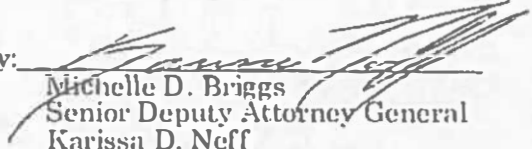
Dated: ~~December~~ January 15, 2021, 2020.

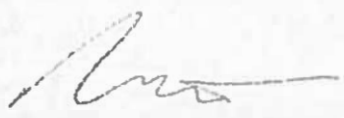
COMMISSION FOR COMMON-INTEREST
COMMUNITIES AND CONDOMINIUM
HOTELS, DEPARTMENT OF BUSINESS
& INDUSTRY, STATE OF NEVADA

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